

LATONIA SMITH  
9748 CANYON LANDING AVE.  
LAS VEGAS, NV 89166  
725-203-2455  
PLAINTIFF IN PROPER PERSON

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
OCT - 7 2019	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY:	DEPUTY

LATONIA SMITH,

Plaintiff(s),

-vs-

CASE NO. 2:19-cv-00824-GMN-EJY

FENNEMORE CRAIG,

Defendant(s).

**EMERGENCY MOTION TO VACATE ORDER OF MAGISTRATE JUDGE AND LIFT  
STAY**

Plaintiff incorporates her objections to the magistrate judge's report and recommendations listed herein as Exhibit 1. Plaintiff's motion is mainly based on those objections and Plaintiff adds a few more commentary concerning this instant motion below.

**MEMORANDUM OF POINTS AND AUTHORITIES**

The Federal Rules of Civil Procedure do not provide for automatic or blanket stays of discovery when a potentially dispositive motion is pending. *See Skellerup Indus. Ltd. V. City of L.A.*, 163 F.R.D. 598, 600-1 (C.D. Cal. 1995). Ordinarily, a dispositive motion does not warrant a stay of discovery. *See Twin City Fire Insurance v. Employers of Wausau*, 124 F.R.D. 652, 653 (D. Nev. 1989). *See also Turner Broadcasting System, Inc. v. Tracindal [] Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997). The moving party carries the heavy burden of making a strong showing of why

1 discovery should be denied. *Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D.  
2 Nev. 2013). See *Kabo Tools Co. v. Porauto Indus. Co., Ltd.*, 2013 U.S. Dist. Lexis  
3 156928, \*1 (D. Nev. Oct. 31, 2013) (citing *Holiday Sys., Int'l of Nev. V. Vivarelli*,  
4 *Scharwz, and Assocs.*, 2012 U.S. Dist. Lexis 125542, \*5 (D. Nev. Sept. 5, 2012)).

5 The Plaintiff does not agree that the magistrate judge had authority to stay  
6 discovery that had already properly commenced under the direction of Judge George  
7 Foley.

8 Plaintiff does not agree that magistrate judge who is not deciding the motions to  
9 dismiss or the opposition thereto should use the “preliminary peek” test when deciding  
10 on a motion to stay; the balancing test, which should have been used was not used,  
11 which led to the magistrate judge prejudging the motion and incorrectly jumping to a  
12 personal opinion that discovery should be stayed. In addition, the magistrate judge only  
13 reviewed defendant’s motion to dismiss in making her decision as clearly evidenced in  
14 her answers (as found in Plaintiff’s objections). The magistrate judge’s order to stay  
15 discovery and apply that stay retroactively is a judicial error and an intentional abuse of  
16 discretion that only serves to prejudice the Plaintiff in this case.

17  
18 **THERE ARE GENUINE DISPUTES OF FACT**


19 Revisiting some of the main disputes of fact which are the basis of defendant’s  
20 entire erroneous motions to dismiss, one of the assertions which defendants raise in  
21 their motion to dismiss include the capacity in which defendant’s entities and/or any  
22 extensions of defendants were operating under (which was not an attorney capacity as  
23 cited by defendants themselves and addressed in Plaintiff’s objections attached as  
24 Exhibit 1; this simply cannot be ignored). Defendants also assert that they only  
25 communicated about the Plaintiff and/or interacted with the Plaintiff in their capacities as  
26 attorneys. Again, this was refuted by the defendants themselves and it is obviously not  
27 true given the evidence submitted by Plaintiff in her opposition. The defendants  
28

1 conspired with separate entities to target and defame the Plaintiff. Plaintiff's opposition  
2 also lays out how defendants fail to meet the standards to classify Plaintiff's lawsuit as a  
3 SLAPP suit. Plaintiff has a right to gather all documentary and testimonial evidence  
4 concerning these facts which are genuinely disputed and cannot be the basis of a  
5 motion to dismiss under the standards of the rules. Another contention raised by  
6 defendants cite that they only made their defamatory statements in a court of law, thus  
7 the absolute litigation privilege applies to their statements made to third parties. Well,  
8 Plaintiff has clearly opposed this assertion by defendants with factual and witness  
9 evidence. Defendants made nasty and untruthful statements concerning the Plaintiff  
10 outside of any court of law (and, no, the Plaintiff does not only cite to the defendants  
11 calling her a 'nigga' as the defamatory statement at subject outside of court, which the  
12 magistrate judge also erroneously cited to—because she did not look beyond the  
13 defendant's motion to dismiss). From the very beginning of these issues, defendants  
14 were involved in making defamatory statements to third parties concerning unfounded  
15 accusations of Plaintiff engaging in criminal activity, unfounded accusations concerning  
16 Plaintiff's mental status (which truly illustrated their complete ignorance), and disgusting  
17 threats made directly to the Plaintiff in the presence of third parties. Every single other  
18 point made in defendant's motion is a factual contention that they have not  
19 substantiated with evidence one way or another; they simply state that "they didn't do  
20 it," which also clearly show that what they characterize as a "motion to dismiss," is not.  
21 The defendants then add a bunch of filings as exhibits which also does not support any  
22 of the factual contentions raised in their motion to dismiss one way or another (and are  
23 contentious and self-serving in and of themselves) and asks that the Court take judicial  
24 notice of the documents, even while requesting that discovery be stayed. In other  
25 words, defendants are asking this Court to give them an unfair advantage in ruling on  
26 their motions. Defendant's motions to dismiss are motions for summary judgments  
27  
28

1 wrongfully characterized as motions to dismiss and it is grave error for this court to rule  
2 on such motions and deny the Plaintiff discovery in this matter. In fact, such a stay is  
3 unprecedented, supports denial of defendant's motion, and further support that  
4 evidence put forth by Plaintiff suggest that defendant's attorney-client and work product  
5 assertions are subject to the crime-fraud exception. It was judicial error for the  
6 magistrate judge to rule that discovery should be stayed since her "preliminary peek"  
7 only consisted at looking at defendant's motions to dismiss and did not involve any type  
8 of balancing of the interests of both parties. Most notably, the magistrate judge cited she  
9 could be wrong. Her "unsure" order presents a prejudice to the Plaintiff. During the time  
10 that Judge Foley's orders were in effect, the Plaintiff sought discovery from key  
11 witnesses (not all witnesses) and sought key documentary evidence; defendants did not  
12 and cannot cite to any extreme burden that this discovery, which was limited at that  
13 point in time, imposed.

14  
15 Based on all of the facts and case law before the court, including the fact that  
16 discovery had already commenced, Plaintiff requests that the order of magistrate judge  
17 Yuchah be vacated and that the stay be lifted on an emergency basis in order to  
18 discontinue the gross amount of prejudice that it has already caused to the Plaintiff.  
19 Plaintiff also requests that the motions that were set before the magistrate judge be  
20 decided by the trial judge and/or remanded to the magistrate judge for further action.

21 Dated this 7th day of October 2019

22  
23 /s/ Latonia Smith   
24 LATONIA SMITH  
25 9748 CANYON LANDING  
26 AVE.  
27 LAS VEGAS, NV 89166  
28

**DECLARATION OF LATONIA SMITH IN SUPPORT OF EMERGENCY MOTION TO  
VACATE ORDER OF MAGISTRATE JUDGE AND LIFT STAY**

I, Latonia Smith, declare as follows:

1. On September 25, 2019 magistrate judge yuchah issued an order staying discovery and blanketly denying all other motions set forth by Plaintiff (and a few of defendant's motions).
2. On September 30, 2019, the judge issued the order.
3. On October 7, 2019, I filed objections to the order.
4. On October 7, 2019 I filed an emergency motion to vacate the order.
5. As the Court's attempts to delay the case by imposing a stay directly violates FRCP 1, case law in this district, and imposes a prejudice on myself by allowing defendants time to delete and alter evidence, alter and unethically influence witness testimony, and continually distribute my medical records (non-exhaustively), I am moving for this matter to be heard on an emergency basis.
6. Defendants nor this Court has cited to sufficient reason for this Court to hold up this case with a stay of discovery matters, especially in the face of defendant's motions to dismiss and the opposition thereto.

I declare under the penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge and belief, and that my assertions are true based on what can be ascertained by any reasonable person of what is occurring in the judicial system.

Dated October 7, 2019



---

Latonia Smith

In pro per

# EXHIBIT 1

1 LATONIA SMITH  
2 9748 CANYON LANDING AVE.  
3 LAS VEGAS, NV 89166  
4 725-203-2455  
5 PLAINTIFF IN PROPER PERSON

6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

8 LATONIA SMITH,

9 Plaintiff(s),

10 -vs-

11 FENNEMORE CRAIG,

12 Defendant(s).

CASE NO. 2:19-cv-00824-GMN-EJY

13 **PLAINTIFF'S OBJECTIONS TO MAGISTRATE JUDGE'S REPORT AND**  
14 **RECOMMENDATION**

15  
16 Under 28 U.S.C. § 636(b)(1)(C) and Rules LR IB 3-1 and 3-2 of the Rules of this  
17 Court, Plaintiff submit the following objections to the new magistrate judge's Report and  
18 Recommendation, issued on September 30, 2019.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Objections to magistrate judge's Report and Recommendation of September 30,  
2019**

Under 28 U.S. C. § 636(b)(1)(C), as well as Rules LR IB 3-1 and 3-2 of the Rules of this Court, any party may serve and file objections to the proposed findings and recommendations of the magistrate judge. The Rules state that the objecting party "must file and serve specific written objections with supporting points and authorities." Under both § 636(b)(1)(C) and the Local Rules, this Court must make a de novo determination of those portions of the report to which objection is made. Plaintiff thus submits these detailed objections to preserve matters for this Court to review as well and for subsequent review.

As explained below, Plaintiff object to the following:

- (1) Overall, the magistrate judge's order is teeming with bias and is an abuse of discretion in this case as will be further explained below. Judges should not favor attorneys over pro se plaintiffs or defendants, and the magistrate judge's answers to simple questions clearly outline that she already sided with defendants before the hearing even began and she did not read any motions set forth outside of those set forth by the defendants. Our legal system has a long history of denying justice to African Americans in particular, and it has morphed into a repulsive, farcical, dysfunctional, corrupt entity based only on money, status, and power. The magistrate judge's erroneous decision to stay discovery, apply that stay retroactively, and then deny justice by allowing defendants time to withhold and/or sculpt witness testimony, destroy evidence, and hide behind court "favors" must be rectified. It is not hard to figure that the Court plans to hold on to this case and the separate case Smith v. Caesars et al (improperly before this court) for several months in order to aide defendants in their other cases,



1 give them time to delete and alter evidence, and make it impossible for Plaintiff to  
2 prove that she was wrongfully targeted by defendants who abused the court  
3 system to initiate a smear campaign and ruin every aspect of her good name and  
4 good life while defendants ask the Court to pardon them because they are  
5 attorneys or multi-millionaire business people who greatly support the very  
6 people that are expected to make "fair and balanced" decisions. That is not a  
7 justice system, that is a system of ever-present, self-serving, judicial corruption.  
8 As is the case here where the Court plans to hold onto the cases for several  
9 months, Courts in the Ninth Circuit have been hesitant to grant discovery stays  
10 when it may be many months before a motion to dismiss is decided.  
11 *See Roueche v. United States*, No. 09-cv-00048-WDM-BNB, 2010 WL 420040,  
12 at \*2 (D. Colo. Feb. 1, 2010) (noting "the general interests of controlling the  
13 court's docket and the fair and speedy administration of **justice** requires that  
14 discovery move forth" (emphasis added)). Plaintiff objects to the magistrate's  
15 opinions on that basis.  
16

17 (2) The defendants did not meet their burden for a stay to be granted. In their motion  
18 for a stay, defendants make two arguments. First, they argue that their motion to  
19 dismiss is pending. Second, they argue that they will incur costs. Both of these  
20 are not sufficient reasons to stay discovery in this district and that fact has  
21 already been decided in this district, although this new magistrate judge chose to  
22 ignore that precedent. This district has already decided that an argument that  
23 discovery may involve inconvenience and expense is insufficient to support a  
24 stay of discovery. *Turner Broadcasting System, Inc. v. Tracinda Corp.*, 175  
25 F.R.D. 544, 556 (D. Nev 1977) ("A pending Motion to Dismiss is not ordinarily a  
26 situation that in and of itself would warrant a stay of discovery. This district has  
27 already decided that the fact that a motion is pending is simply not enough to  
28

1 warrant a blanket stay of all discovery. *Tradebay LLC v. eBay, Inc.*, 278 F.R.D.  
2 597 at 603 (D. Nev. 2011). Other courts in the ninth circuit (and outside of the  
3 ninth circuit) have decided the same. Courts have indicated that stays of all  
4 discovery are disfavored and/or that more than simply the filing of a motion to  
5 dismiss is required to stay all discovery --- See, e.g., *Jackson v. Denver Water*  
6 *Bd.*, No. 08-cv-01984-MSK-MEH, 2008 WL 5233787, at \*1 (D. Colo. Dec. 15,  
7 2008) ("Generally, it is the policy in this district not to stay discovery pending a  
8 ruling on motions to dismiss."); *Steil v. Humana Health Care Plans, Inc.*, No. CIV.  
9 A. 99 2541 KHV, 2000 WL 730428, at \*1 (D. Kan. May 1, 2000) ("The District of  
10 Kansas generally disfavors motions to stay discovery.").

11 (3) The underlying principle in determination of whether to grant or deny a stay  
12 clearly is that [t]he right to proceed in court should not be denied except under  
13 the most extreme circumstances." *Commodity Futures Trading Comm'n v.*  
14 *Chilcott Portfolio Mgmt., Inc.*, 713 F.2d 1477, 1484 (10<sup>th</sup> Cir. 1983) (quoting *Klein*  
15 *v. Adams & Peck*, 436 F.2d 337, 339 (2d Cir. 1971). Courts have required that  
16 the burden must be an extraordinary burden, so a defendant cannot rely on a  
17 generic assertion that discovery will be burdensome, because that is always the  
18 case. See, e.g., *Hoxie v. Livingston Cnty.*, No. 09-CV-10725, 2010 WL 822401,  
19 \*1 (E.D. Mich. Mar. 4, 2010) ("The wheels of justice would surely grind to a halt if  
20 discovery were stayed pending dispositive motions and based on such generic  
21 allegations of undue burden and expensive."); *Standard Bank PLC v. Vero Ins.,*  
22 *Ltd.*, No. 08-cv-02127-PAB-BNB, 2009 WL 82494, at \*2 (D. Colo. Jan. 13 2009)  
23 ("Parties always are burdened when they engage in litigation, whether the case  
24 ultimately is dismissed; summary judgment is granted; the case is settled; or a  
25 trial occurs. That is a consequence of our judicial system and the rules of civil  
26 procedure. There is no *special burden* on the parties in this case." (emphasis  
27  
28

1 added)). In other words, stays of the normal proceedings of a court matter should  
2 be the exception rather than the rule. The defendants have the burden, not the  
3 Plaintiff, and they have clearly failed to show the "extreme" circumstances  
4 necessary for a stay of all discovery, especially in the case where discovery  
5 already commenced. Plaintiff objects to the magistrate's opinions on that basis  
6 and on the basis that defendants make no arguments to justify a stay in this  
7 case.

8 (4) In addition to defendants not meeting the "heavy" burden they carry by making a  
9 strong showing of why discovery should be denied, it is improper for the  
10 magistrate judge to use the preliminary peek test to prejudge a motion that is not  
11 being decided by herself, and it is an obviously problematic test to use as  
12 evidenced in her own answers to questions, which illustrate that she only relied  
13 on defendants' brief since she parroted defendants' exact arguments as under  
14 the façade of her "opinions," concerning the motion to dismiss (**Exhibit 1-**  
15 **transcript highlights**). The judge's preliminary peek only included looking at  
16 defendant's motions to dismiss. When Plaintiff asked if the Opposition to the  
17 motion was read and brought up the facts and evidence contained in the  
18 opposition directly rebutting defendant's arguments in their motion to dismiss,  
19 judge cited that it was for the trial judge to decide. Well, which is it?! You cannot  
20 parrot defendants' arguments and then retreat to the excuse of "trial judge's  
21 decision" when Plaintiff brings up her arguments that were placed in opposition.  
22 As has always been the case, judges favor attorneys resulting in prejudice to the  
23 Plaintiff. Looking at some examples of the magistrate judge's simple parroting of  
24 defendants' arguments highlight that she did not look beyond defendants'  
25 motions to dismiss. As exhibited in 48:2-7, the magistrate judge makes an  
26 argument that statements made in a court proceeding are privileged. The Plaintiff  
27  
28

1 has refuted this argument because none of the statements at subject in Plaintiff's  
2 lawsuit were made in a court of law, nor were they connected to any litigation  
3 matters involving the Plaintiff. As exhibited in 48:9-11, the Plaintiff has refuted  
4 this argument because the Plaintiff never stated that Fennemore conspired with  
5 themselves. In fact, in the claim for civil conspiracy, Plaintiff cites that Fennemore  
6 employees became involved in a "plot" to target Ms. Smith. The face of Plaintiff's  
7 complaint, which is incorporated into each claim, cite conspirators as being  
8 CEC/PHWLV. To the extent that the magistrate judge is attempting to infer that  
9 the Plaintiff must have included CEC/PHWLV as defendants, no such precedent  
10 has been made and civil conspiracy only requires that the Plaintiff plead two or  
11 more parties acting in concert with one another with an intent to accomplish an  
12 unlawful objective for the purpose of harming another. As exhibit in 48:15-17, the  
13 Plaintiff has refuted this argument by defense with evidence showing that  
14 defendants are responsible for making defamatory statements and causing Ms.  
15 Smith to be hospitalized (on the face of Plaintiff's complaint which was  
16 incorporated into all claims), which is partly the basis for Plaintiff's emotional  
17 distress claim. To the extent that the magistrate judge is attempting to state that  
18 making statements to third parties that the Plaintiff is a schizophrenic, has sent  
19 threatening messages, is a danger, etc. is not defamation, Plaintiff knows of no  
20 such precedent that protects any person from making such unfounded  
21 accusations to third parties. In fact, witness testimony was provided clearly  
22 indicating that defendants and their cohorts began their plans to target and  
23 defame Ms. Smith long before they began abusing the Court to aide them, asking  
24 the Court to grant "favors" on their behalf. To the extent that the magistrate judge  
25 parrots defendants' arguments that the settlement agreement provided for its  
26 distribution, the judge has obviously not read the agreement because it expressly  
27  
28

1 does not provide for its release whenever others saw fit, so it is breach of an  
2 agreement and defamation which parties agreed would cause irreparable harm,  
3 and Plaintiff has every right to take up the matter in a court of law. Even worse  
4 defendants have used the agreement to suggest to third parties that Plaintiff  
5 somehow admitted to sending threats, which is also blatantly false as evidenced  
6 on the face of the agreement. It is obvious that the magistrate judge is only  
7 parroting defendants' arguments and has not considered any writings beyond  
8 that. Plaintiff objects to the magistrate's opinions on that basis.

- 9 (5) The magistrate judge is not ruling on the motion to dismiss and thus she should  
10 only be weighing the interests of the parties by using a balancing test, which was  
11 clearly not implemented as there was no "balancing" of anything. A magistrate  
12 may deem a motion to dismiss likely to succeed, and therefore stay discovery  
13 even though it presents a significant risk of spoliation of evidence or would not  
14 impose any extraordinary burden on the parties (as is the case in this instant  
15 lawsuit). The magistrate's views on the motion to dismiss may differ from the  
16 district judge's views and absent consent by the parties, such important decisions  
17 are better resolved using a balancing test that does not involve the magistrate  
18 prejudging the motion to dismiss; the magistrate should base rulings on a motion  
19 to stay discovery on factors independent of the merits of the motion to  
20 dismiss. This both protects the rights of the parties and also falls within the core  
21 competency of magistrate judges, who are primarily responsible for settling  
22 discovery and scheduling disputes in civil cases. As exhibited in 47:8-10, the  
23 magistrate judge admits that she could be wrong; her "could be" is a prejudice to  
24 the Plaintiff who has been prevented from gathering relevant evidence while  
25 defendants destroy such evidence because of Plaintiff's contentions that the  
26  
27  
28

1 crime-fraud exception should be applied in this case. Plaintiff objects to the  
2 magistrate's opinions on that basis.

3 (6) The new magistrate judge seeks to overrule another trial judge's order and then  
4 apply a retroactive stay. The general rule is that one trial judge may not modify or  
5 overrule an order entered by another trial judge on a matter of law. If the order is  
6 about a matter of discretion rather than a matter of law, the second judge may  
7 modify it, but only if there has been a substantial change in circumstances. On  
8 July 26, 2019 defendants submitted a unilateral discovery plan and attempted to  
9 untruthfully cite to Magistrate Judge Foley that a stay was stipulated by both  
10 parties. On July 29, 2019 Judge Foley denied defendants' positioning and  
11 ordered that discovery begin. Although Judge Foley instructed that defendants  
12 could file a future stay and amend scheduling orders (meaning the due dates for  
13 discovery), he did not state that the stay could be applied retroactively to halt  
14 discovery that was already in progress and there is no authority to suggest such  
15 an unprecedented move by the new magistrate judge. When the Plaintiff issued  
16 subpoenas for documentary evidence and testimony of key witnesses, the order  
17 of Magistrate Judge Foley was in effect and remained in effect; defendants'  
18 motions to dismiss were also pending at the time Judge Foley made his decision  
19 (the correct decision) for discovery to begin. There was no change in  
20 circumstances to warrant the new magistrate judge to not only overrule Judge  
21 Foley's order, but to apply her new orders retroactively. Thus, Plaintiff objects to  
22 the new magistrate judge's orders denying Plaintiff to discover evidence that was  
23 already in progress while a prior judge's orders were in effect.

24  
25  
26 (7) The defendants' motions to dismiss warrant that the Plaintiff be allowed to  
27 conduct discovery. The defendants' motions to dismiss are motions for summary  
28 judgment and they are improperly categorized as motions to dismiss, there is no

1 dispute to this fact. Ever issue brought up in their motion and the Complaint are  
2 factual contentions (including but not limited to the capacities in which  
3 defendants were operating when they made defamatory statements). In one  
4 motion, defendants even state that their employees could not have breached the  
5 settlement agreement because it did not apply to them (well ladies and gents that  
6 would also imply that they were never operating in the attorney capacity that they  
7 want to hide behind when convenient, so defendants must choose a position and  
8 this Court must not blatantly overlook such a statement when considering  
9 Plaintiff's claims of defamation). See case 2:19-cv-00856-GMN-DJA, Document  
10 64 (6:3-6) and Plaintiff's reply, Document 78. The defendant's defamatory  
11 statements and actions are simply not privileged by their own admission. The  
12 defendants requested the Court to take judicial notice of documents included in  
13 their summary judgement; documents which in and of themselves contain factual  
14 contentions. As stated in her opposition, defendants seek to hamstring the  
15 Plaintiff with a stay provision while simultaneously asking the Court to determine  
16 factual issues in the context of, what is supposed to be, a strictly procedural  
17 motion. The magistrate judge has aided the defendants in doing this very thing,  
18 and it must not be accepted as "fair" or "balancing" by this Court. Plaintiff objects  
19 to the magistrate's opinions on that basis.  
20

21 (8) The new magistrate judge ruled to stay discovery in order to avoid ruling on other  
22 motions simply citing that she would dismiss all other motions due to granting the  
23 stay. Plaintiff's motion for injunctive relief regarding medical records should have  
24 been ruled on along with the motion to strike the extraneous evidence submitted  
25 by Fennemore Craig; these motions were distinct from simple discovery requests  
26 and continually allow the defendants to pack the record with evidence that was  
27 either confidential and not subject to distribution (Plaintiff's medical records)  
28



1 and/or evidence in which defendants attempt to advance their erroneous theory  
2 that the Plaintiff issued threats. And since this court wants to give an unfair  
3 advantage to defendants, Plaintiff will address their packed-on evidence herein.  
4 The short video clips, that were cut from a larger file, that defendants requested  
5 from the their friends, the Court, to make it look like Plaintiff was “lying in wait” for  
6 other parties at subject on the first floor is erroneous along with their arguments.  
7 On the first floor, as stated, Plaintiff continued walking and talking with her  
8 mother (as stated in affidavit, Plaintiff was on Apple Watch Walkie Talkie—look it  
9 up—with her mother, so yes the Plaintiff was “walking and talking” with her  
10 mother). The Plaintiff never stated her mother was beside her. The Plaintiff  
11 began waiting for her mother who Plaintiff realized was behind her after getting  
12 off of an elevator. Plaintiff was not “waiting” on the parties at subject who  
13 attempted to make a scene when they got to the first floor and saw Plaintiff. And  
14 quite frankly, parties are so repugnantly insignificant as to command attention  
15 from Plaintiff to wait for them in a courthouse. Next, the evidence that defendants  
16 packed on in which they want to make an argument that Plaintiff threatened  
17 defendants on the first floor of a courthouse where dozens and dozens of people  
18 were walking around and where multiple officers were also present is so  
19 unintelligible, unbelievable, and completely unfounded. As stated, Plaintiff does  
20 not believe that the recorded evidence contains her voice, but at no time was the  
21 Plaintiff speaking with the other parties at subject and at no time has the other  
22 parties at subject brought forth any evidence (except for what stems from their  
23 own foul mouths) that any person told them that they would “f them up.” Plaintiff  
24 already admitted to turning towards the other parties and stating that she never  
25 made any threats when the other parties at subject began yelling out, like  
26 maniacs that they were being threatened in an attempt to cause a scene, and to  
27  
28



1 suggest that the Plaintiff was threatening them. The other parties at subject  
2 cannot bring forth any independent witness to truthfully testify (excluding ones  
3 that they don't pay) that Plaintiff threatened them because it did not occur.  
4 Nevertheless, the judiciary was suckered into, once again, covering for the  
5 unethical attorneys that work on their behalf. Plaintiff objects to the magistrate's  
6 opinions on that basis.


7 (9) The prejudice caused to Plaintiff by the stay outweighs the stay order. A stay of  
8 discovery ultimately prejudices Plaintiff and allows witnesses more time to  
9 delete/alter evidence, disappear, and/or lose recollection of important events.  
10 Notably, the magistrate judge never mentions that she weighed out the risks to  
11 Plaintiff's case by staying discovery; she did not cite to weighing the interest of  
12 the Plaintiff in proceeding expeditiously with the civil action as balanced against  
13 the prejudice to Plaintiff if a delay occurred. The case involves significant witness  
14 testimony and there is a risk that evidence will be spoiled, and, of course, this  
15 Court isn't going to hold their attorneys liable for spoiled evidence. *Jackson v.*  
16 *Denver Water Bd.*, No. 08-cv-01984-MSK-MEH, 2008 WL 5233787, at \*1 (D.  
17 Colo. Dec. 15, 2008) (staying case could result in delay and attendant "adverse  
18 consequences such as a decrease in evidentiary quality and witness  
19 availability"). Plaintiff objects to the magistrate's opinions on that basis.

20  
21 So, in conclusion, Plaintiff does not agree with the new magistrate judge's personal  
22 opinions/ experiences/ orders at all and considers them to be an abuse of discretion, at  
23 the very least, concerning the discovery that was already in progress. Plaintiff does not  
24 agree with the magistrate judge taking the easy and slothful road out by just deciding to  
25 deny all other motions, whether that was because she wanted to grant defendants a  
26 favor or because she did not feel like assessing the other motions in a fair manner. In  
27 fact, the magistrate judge put on a circus because she already decided that she was  
28

1 going to grant the stay to defendants before she pretended to impose impartiality by  
2 asking to hear the other motions, and her answers to specific questions also highlight  
3 that she indeed already prejudged the motion to stay (by only reading defendant's  
4 motions). Plaintiff would expect a fair and impartial judge to at least be able to intelligibly  
5 cite and discuss a few points of opposition brought up by Plaintiff because, just like the  
6 general public, Plaintiff does not believe in the "equal justice under the law" motto of our  
7 judicial system. Notably important motions scheduled to be decided included the cross  
8 motion for injunction filed by Plaintiff to prevent the distribution of medical records and a  
9 motion to strike erroneous evidence and commentary added onto the record by  
10 defendants. Plaintiff objects to those motions being denied in one fell swoop as an  
11 abuse of discretion.

12  
13 Although Plaintiff realizes that the objections may be upsetting to the judiciary,  
14 Plaintiff asks that the judiciary not be upset but that they evaluate the biases present in  
15 their decision making and in the legal system, and work to eliminate such biases (even  
16 for the betterment of future plaintiffs or defendants), which Plaintiff believes can be  
17 achieved in this district. Plaintiff appreciates the time and attention to these important  
18 matters and expects that these concerns will be reviewed de novo on an expedited  
19 basis given that the magistrate judge's orders are clearly prejudicial to the Plaintiff's  
20 case and defendants are not prejudiced in any significant way concerning the discovery  
21 that was already pending for witness testimony and documentary evidence.

22 Dated this 7th day of October 2019  
23  
24

25   
26 /s/ Latonia Smith  
27 LATONIA SMITH  
28 9748 CANYON LANDING  
AVE.  
LAS VEGAS, NV 89166

# EXHIBIT 1

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
LAS VEGAS DIVISION

LATONIA SMITH,	)	CASE NO: 2:19-CV-00824-GMN-EJY
	)	
Plaintiff,	)	CIVIL
	)	
vs.	)	Las Vegas, Nevada
	)	
FENNEMORE CRAIG,	)	Wednesday, September 25, 2019
	)	
<u>Defendant.</u>	)	(1:04 p.m. to 2:15 p.m.)

MOTION HEARING

BEFORE THE HONORABLE ELAYNA J. YOUCHAH,  
UNITED STATES MAGISTRATE JUDGE

Appearances: See next page

Court Recorder [ECRO]: Digital

Courtroom Administrator: E. Garcia

Transcribed by: Exceptional Reporting Services, Inc.  
P.O. Box 8365  
Corpus Christi, TX 78468  
361 949-2988

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

EXCEPTIONAL REPORTING SERVICES, INC

**APPEARANCES FOR:**

**Plaintiff:**

**LATONIA SMITH, PRO SE  
9748 Canyon Landing Ave.  
Las Vegas, NV 89166**

**Defendant:**

**ALEX FUGAZZI, ESQ.  
MICHAEL PARETTI, ESQ.  
Snell & Wilmer  
3883 Howard Hughes Pkwy., Suite 1100  
Las Vegas, NV 89169**

**RILEY A. CLAYTON, ESQ.  
Hall Jaffe & Clayton  
7425 Peak Drive  
Las Vegas, NV 89128**

**JEROME R. BOWEN, ESQ.  
9660 W. Cheyenne Ave., Suite 250  
Las Vegas, NV 89129**

Las Vegas, Nevada; Wednesday, September 25, 2019; 1:04 p.m.

(Call to Order)

**THE CLERK:** This is attendance in the case of 2:19-CV-824-GMN-EJY, Latonia Smith versus Fennemore Craig.

Counsel, please enter your appearance for the record.

**MR. FUGAZZI:** Good morning, your Honor, Alex Fugazzi and Michael Paretti on behalf of Fennemore Craig and the seven Fennemore Craig employees that are subpoenaed by plaintiff. And I have with me my client representative, Janice Proctor-Murphy (phonetic) who is the assistant general counsel of Fennemore.

**THE COURT:** Thank you. And you are, I assume, Ms. --

**MS. SMITH:** Yeah, I'm the plaintiff. Yes.

**THE COURT:** Okay. Well, we have before us today a variety of motions that have been filed by the parties. And I think that the best way to go through this to make the record clear is motion by motion. Although I do understand that that will take some time, I'd rather make sure that the record is clear and that everybody has had an opportunity to provide me with the information if they would like to do so.

So we will start with the Motion to Stay filed by the defendants. And Mr. Fugazzi, are you going to be arguing?

**MR. FUGAZZI:** Yes, your Honor, I am.

**THE COURT:** Okay. And I have read everything. I do understand the issues that are before the Court, thoroughly

1 read all of the pending motions and exhibits, and have looked  
2 at the complaint. So -- and the amended complaint, so I have  
3 that ground. You don't need to come up to the podium. But if  
4 there's anything you'd like to add or emphasize to the Court  
5 regarding your Motion to Dismiss, I'm happy to listen to that.

6 **MR. FUGAZZI:** Thank you, your Honor. The Motion to  
7 Stay -- and I appreciate your telling me in advance as I  
8 expected, you had read everything. I will not go through all  
9 the briefs.

10 The Motion to Stay requires a sneak peek analysis for  
11 the Court which requires a look at the Motion to Dismiss to  
12 determine whether or not there is a likelihood that the dispute  
13 could be resolved in its entirety if the Motion to Dismiss is  
14 granted.

15 So I wanted to very briefly touch on a few highlights  
16 of that standard, your Honor, because I understand it is our  
17 burden and there are several grounds under which I think the  
18 Court should be convinced that the Motion to Dismiss can be  
19 resolved in its entirety and in the interim the case should be  
20 stayed.

21 The two overarching defenses really are the anti-  
22 SLAPP and the litigation privilege. And that covers the bulk  
23 of the allegations in plaintiff's complaint. And to the extent  
24 either of those defenses -- or they're actually immunities, the  
25 extent either of those immunities don't apply. The individual

1 claims themselves fail under 12(b)(6) standards.

2           So the anti-SLAPP as you know provides for immunity  
3 for civil liability based on good faith communications. And  
4 the right to petition and issues of public concern and judicial  
5 proceedings are in fact considered issues of public concern  
6 under NRS 41.650.

7           So the filings, the proceedings, the petitions, all  
8 the things surrounding the underlying litigation -- and not  
9 just this dispute and not just the prior disputes with  
10 Ms. Smith, but also the disputes with her mother that Fennemore  
11 Craig has been defending Caesar's Planet Hollywood in the  
12 underlying litigation.

13           And if you look at her own complaint in paragraph 6,  
14 she defines the alleged improper conduct by Fennemore Craig as  
15 occurring in the confines of her mother's litigation, paragraph  
16 6 says, "during the course of this litigation that began on  
17 November 5, 2018, employees of Fennemore Craig began harassing,  
18 intimidating, and defaming Ms. Smith who is a witness in the  
19 current pending litigation."

20           So clearly squarely within the context of the anti-  
21 SLAPP statute, and I think that also is helpful to pivot when  
22 looking at the equally broad litigation privilege that applies.  
23 And there's a slew of cases, probably the Greenberg Traurig is  
24 the most seminal one on that, but that Court really emphasized  
25 the breadth of that privilege and how it applies to attorneys



1 participating in judicial proceedings and granting those  
2 Officers of the Court the utmost freedom in their efforts to  
3 obtain justice for the clients.

4           And again, paragraph 6, I think is equally helpful to  
5 both the anti-SLAPP and the litigation privilege defense  
6 because by her own allegations the alleged improper conduct all  
7 occurred within the confines of litigation, the Parazar  
8 (phonetic) litigation.

9           But the claims themselves individually fail as well.  
10 And very briefly, the conspiracy claims, there's only one  
11 defendant in this lawsuit, it can't be a conspiracy with one  
12 defendant. And the Case Law we cited for you supports that  
13 proposition even if you allege individual employees within the  
14 one defendant or agents such as lawyers of that one defendant,  
15 it can't conspire. So the conspiracy claim, even putting aside  
16 the anti-SLAPP and litigation privilege, fails on that ground.

17           Similarly the slander and defamation claims also fail  
18 on a 12(b)(6) standard. I know, Judge, that you can't take --  
19 and we're not going to dispute fact issues, but I would be  
20 remiss if I didn't say again on the record that Fennemore Craig  
21 and the seven individuals who have been subpoenaed adamantly,  
22 adamantly deny ever making any type of racial slur to Ms. Smith  
23 in lieu of the allegation of the complaint.

24           I understand that's not here for you decide that,  
25 Judge, but because of the explosive nature of those comments, I

1 really would be remiss if I didn't at least make that record.  
2 So I'll move on from that and I appreciate you allowing me to  
3 make that statement.

4           Their allegations of the settlement agreement being  
5 produced improperly and in violation, but under the terms of  
6 the settlement agreement themselves, there are times -- this is  
7 still under the slander and defamation to the extent the claim  
8 is based upon disclosure of a settlement agreement. The  
9 settlement agreement within the definition and confines of the  
10 settlement agreement itself allow it to be disclosed under  
11 certain circumstances, and the alleged disclosure that occurred  
12 in March of 2019 was equally within litigation.

13           In fact, this cover letter -- and that's going to be  
14 the subject of another motion before the Court because it's our  
15 position that that is a fabricated document. But again, even  
16 if you take that document on its face, that is within the  
17 confines of the underlying Parazar - Caesar's litigation. The  
18 folks who were provided with the cover letter and that  
19 agreement were lawyers. They were all lawyer either in the  
20 mother's litigation or lawyers defending Caesar's.

21           So the intentional infliction of emotional distress  
22 claim, the last one, also again fails on its own. We cited for  
23 you cases that although abhorrent the language that Ms. Smith  
24 alleges my client used, which again it did not -- do not  
25 constitute intentional infliction of emotional distress.

1           The last thing I'll point out to you, your Honor, and  
2 then I'll stop unless you have questions for me, is I would  
3 suggest that looking at the anti-SLAPP statute itself might be  
4 -- give you some guidance as to whether or not a Stay should be  
5 granted.

6           I understand very clearly that Ninth Circuit says the  
7 procedural requirements of the SLAPP statute are not binding  
8 upon Federal Courts, and I'm not saying that the SLAPP statute  
9 is. But NRS 41.6603(e)(1) provides that if a special Motion to  
10 Dismiss is filed pursuant to subsection 2, the Court shall Stay  
11 discovery pending ruling by the Court's own motion.

12           Again, I know that doesn't directly apply to you,  
13 that's not binding on you, but I think it's helpful to see how  
14 the Nevada legislature contemplated the anti-SLAPP statutes  
15 when such a motion was brought how its citizens would be  
16 protected and how the Stay would be an option.

17           And in State Court it would be an easy argument for  
18 me to simply say shall or shall, your Honor. But I understand  
19 I'm not in State Court.

20           So with that, unless the Court has any questions for  
21 me?

22           **THE COURT:** I don't have any questions for you.  
23 Thank you.

24           **MR. FUGAZZI:** Thank you.

25           **THE COURT:** Ms. Smith, do you want to be heard on

1 your opposition to the Motion to Stay Discovery which was filed  
2 by defendant?

3 **MS. SMITH:** Yes. But do I have to stand or can I  
4 sit?

5 **THE COURT:** You can sit. That's fine.

6 **MS. SMITH:** Cool. So I opposed their motion because  
7 I feel like they're trying to hide behind their title as  
8 attorneys.

9 But basically when it comes to the Motion to Dismiss  
10 what I replied is that a lot of the issues in the Motion to  
11 Dismiss are factual contentions, number one, that I feel  
12 requires discovery.

13 **THE COURT:** Ms. Smith, I'm just going to interrupt  
14 you. I may have said Motion to Dismiss. I meant Motion to  
15 Stay. If I misspoke, I apologize. Their Motion to Stay  
16 Discovery.

17 **MS. SMITH:** Okay.

18 **THE COURT:** So --

19 **MS. SMITH:** And he just argued like some of the stuff  
20 in the Motion to Dismiss --

21 **THE COURT:** Well he was --

22 **MS. SMITH:** -- so I was going to respond to it.

23 **THE COURT:** -- he was talking about the underlying  
24 claims, but I am not going to decide the Motion to Dismiss  
25 today. I just want to make sure you understand that.

1           **MS. SMITH:** Yes.

2           **THE COURT:** He'll -- okay. Then go ahead.

3           **MS. SMITH:** So with my case, number one, I'm not a  
4 part of my mom's litigation, and they keep trying to tie me to  
5 that.

6           But everything that happened, the defamation, the  
7 slander, the distribution of the settlement agreement, all of  
8 that is outside of my mom's case. And really when I -- when I  
9 say that they were conspiring, meaning it was themselves and  
10 Caesar's and Planet Hollywood that conspired to target me.

11           And that was all in an attempt to fire my mom and/or  
12 prevent her from getting her job back. So they used me to  
13 create, you know, these anonymous messages, I guess, and that's  
14 when the attack against me began with them using the judicial  
15 system to target me. That's basically the overview of what the  
16 lawsuit is about.

17           As far as the Motion to Stay Discovery that  
18 Mr. Fugazzi filed, basically he just says that the motion  
19 should be -- I mean, the motion should be granted because they  
20 would incur costs and that there's a pending Motion to Dismiss  
21 on the table.

22           But both of those are not reasons to stay discovery  
23 and that was talked about a little bit in the -- in the Trade  
24 Bay (phonetic) case and in the Turner case from Nevada 1977,  
25 where the Court rejected the argument that a Motion to Stay

1 should be granted because the other party might incur costs.  
2 And that's basically in their motion. What they argue is that  
3 because I want to take the deposition of the seven individuals  
4 that were involved or mostly involved, that discovery should be  
5 stayed because they would incur costs associated with that.

6 And like I said in my opposition to their Motion to  
7 Dismiss, their Motion to Dismiss is just filled full of factual  
8 contentions. All they say is, "Oh, we didn't do that." So I  
9 make a claim, and they basically say, "No, they didn't do it."  
10 But they don't present any evidence to oppose my claims which I  
11 do.

12 **THE COURT:** Your motion, number 31, is the next  
13 motion on the calendar which is a Motion to Compel Discovery.

14 **MS. SMITH:** Correct.

15 **THE COURT:** You mentioned some of that in what you  
16 just said. Would you like to argue that motion now, tell me  
17 why you believe that motion should be granted?

18 **MS. SMITH:** Yes. So the Motion to Compel Attendance  
19 at Deposition is for the -- some of the Fennemore employees.  
20 And then I think the other -- there is other Motions to Compel  
21 on that, but as far as the Fennemore employees' Motion to  
22 Compel on -- so Fennemore was the one involved with Caesar's  
23 with creating these documents that they have been distributing  
24 and using to get TPOs against me, to defame me, basically  
25 saying that I, you know, distributed threats.

1           And some of these -- some of these defamation claims  
2 that they made about me were outside of any type of litigation.  
3 Like I said, I'm not involved in my mom's litigation, and as  
4 shown in the exhibit I'm not even mentioned in my mom's  
5 litigation. So they took it upon themselves to bring me into  
6 that litigation later on, which that's another issue.

7           But as far as compelling the employees that were  
8 involved, they were the ones involved in distributing the --  
9 either the agreements which the -- another thing about the  
10 agreement, the agreement does not provide for them to -- they  
11 didn't provide for them to distribute it whenever they saw fit.  
12 There were other aspects of the agreement which stated that  
13 before they even distributed such an agreement to whoever,  
14 which it would only -- it should have only been to a Court.  
15 But before they even distributed such an agreement they had to  
16 contact my attorney who represented me in that matter, and  
17 present evidence showing that those -- what they were saying or  
18 what they were trying to get was actually factual. So that --

19           **THE COURT:** Tell me why these seven people should be  
20 compelled to attend depositions when they are not parties to  
21 this case?

22           **MS. SMITH:** So I believe -- so Ms. Pierce, she was  
23 one of the employees of theirs that went ahead and distributed  
24 the confidential settlement agreement. She also sent a letter  
25 to my mom's previous attorneys, I'm not sure why, but she sent

1 a letter basically saying that I'm a danger, that I've issued  
2 threats in the past, those type of things which I consider  
3 defamation. That was Shannon --

4 **THE COURT:** Can you tell me about Leslie Bryant-Hart  
5 (phonetic) Janice Proctor-Murphy (phonetic)?

6 **MS. SMITH:** Yes, Leslie Bryant-Hart and Janice  
7 Proctor-Murphy, so they were involved in the -- so I guess if  
8 he doesn't want to call it conspiracy or whatever, Shannon  
9 Pierce is the one who initiated it. She called her other  
10 members of her firm in Reno, told them to go file a TPO against  
11 me based on another one of their anonymous letters that they  
12 created.

13 Leslie Bryant-Hart and Janice Proctor-Murphy were  
14 involved in basically getting or helping Shannon Pierce, Wade  
15 Beavers (phonetic) and some of their other employees to go  
16 ahead and get a TPO based off of messages that they created and  
17 you know, the statements that they made concerning the fact  
18 that I was a threat, that I sent threats in the past, that I'm  
19 a danger, stuff like that.

20 **THE COURT:** And would -- is that the same argument  
21 you would make with respect to Bernak Ruben Worthland  
22 (phonetic), Shanna Brazelton (phonetic), and Randy Planet  
23 (phonetic), and Wade Beavers?

24 **MS. SMITH:** So I dropped the one against Wade Beavers  
25 for now because there's other things going on.



1           **THE COURT:** What's going on?

2           **MS. SMITH:** So I dropped that one. But --

3           **THE COURT:** What about the other three?

4           **MS. SMITH:** So Bernak Worthland and the other lady,  
5 I'm not -- I can't remember her name --

6           **THE COURT:** Shanna Brazelton?

7           **MS. SMITH:** So Shanna Brazelton, she was involved in  
8 the Reno one.

9           The other -- the other two, they were involved in the  
10 2017 Las Vegas one where they had their employees or whatever,  
11 create messages so that they could basically defame me, get  
12 TPOs against me that -- and all of this is based -- I -- all of  
13 this was because they wanted to fire my mom and/or prevent her  
14 from getting her job back. And so that's the issues that  
15 Fennemore and Caesar's conspired with one another to do that.

16           **THE COURT:** And then tell me, in this Motion to  
17 Compel you also seek documents from the law firm Fennemore  
18 Craig, recall that?

19           **MS. SMITH:** Yes, the production of -- I basically  
20 just asked for any documents in their possession from 2017 to  
21 now because 2017, November of 2017 is when this whole thing  
22 began really to present. And I sought documents either  
23 pertaining to myself specifically, meaning my name, my social,  
24 whatever information they have on me, and/or documents  
25 pertaining to my mom.

1           Since I was brought into this because of them wanting  
2 to go ahead and fire my mom and prevent her from getting her  
3 job back, that is why I sought the documents from specifically  
4 2017 to now, currently. I am not seeking documents before  
5 then.

6           I -- you know, they make an argument that it's broad  
7 and it's, you know, a burden for them to get those documents,  
8 and it's really just hollow arguments. I think one of the  
9 arguments they made is attorney/client privilege. And I  
10 specifically asked about this, like, how can you assert a  
11 privilege over documents that you don't know, that you haven't  
12 reviewed. And they didn't say anything, they just -- they're  
13 just asserting a broad -- they're asking for a broad protective  
14 order and asserting a broad privilege over any documents, you  
15 know, that have to do with myself and my mom.

16           **THE COURT:** Mr. Fugazzi, I -- if you want to add  
17 something to this motion, you can, but if you'd like to move on  
18 to your Motion to Quash or in the alternative for a protective  
19 order, that would be fine.

20           **MR. FUGAZZI:** I think it makes sense, your Honor, for  
21 me in one sitting or one stand to take on both because they're  
22 very similar, if that's okay with the Court?

23           **THE COURT:** Okay.

24           **MR. FUGAZZI:** The briefs, and I believe what you just  
25 heard from plaintiff, reaffirm our belief that what she is

1 asking for are active litigation files from the law firm.

2 She's asking for the active litigation file in her  
3 mother's law suit with Caesar's, and she's asking for the  
4 litigation file surrounding all the TPOs that we just walked  
5 through. That's the involvement of the Fennemore lawyers.

6 She wants active litigation files that are clearly  
7 privileged, that are clearly subject to work product. And  
8 other than a 22 month time range, there's nothing really done  
9 to limit the scope of those. There's no effort to try and  
10 exclude privileged or work product documents. In fact, when  
11 you look at the subpoenas themselves they reference requests  
12 for materials that have to do with the matters listed in the  
13 lawsuit which are related to Latonia Smith or her mother,  
14 Anasar (phonetic) Parazar.

15 The face of the subpoenas themselves are asking for  
16 privileged work product protection. The other part of the  
17 subpoenas are asking for forensic copies and images of personal  
18 computers and personal cell phones of all of the seven  
19 Fennemore witnesses.

20 Three of those people that she's asking for have  
21 already secured temporary protective orders against her. So in  
22 other words, she is asking the very people that a Court agreed  
23 with us that she had threatened to turn over a forensic image  
24 and a forensic copy of their personal computers, their personal  
25 cell phones. And all of us know the layers of relevant and

1 personal information that's contained in a cell phone that most  
2 of us would not want to turn over to anyone, never mind a  
3 litigant, never mind someone who we have a good faith basis to  
4 believe they either physically threatened or worse to them.

5           So that's what's being asked here, active or dormant  
6 litigation files of a law firm. The arguments that these  
7 requests are somehow tailored or narrowed is just not reflected  
8 in the subpoenas or the briefs themselves. There's a reference  
9 to an identification of a forensic examiner, but there's no  
10 identity of who that person would be. There's a general  
11 discussion of possible search terms, but those search terms  
12 aren't disclosed.

13           And then there's a reference that the privilege will  
14 be protected. But when you read the briefs and you hear the  
15 argument, there's no effort to protect privilege. Ms. Smith  
16 doesn't believe there is a privilege. She believes the crime  
17 fraud exception applies and that as a result there simply is no  
18 privilege.

19           But that's a burden on her. That's a preponderance  
20 of the evidence standard, the crime fraud exception, that  
21 requires her to actually show with evidence that there is an  
22 ongoing or future crime that a client is using a lawyer to help  
23 perpetrate. And there's no evidence of that fact. Argument  
24 and speculation don't equal evidence, your Honor.

25           So the other issue about her comments that we didn't

1 -- we don't know what documents exist, I think that was a  
2 comment that another lawyer made to her not me. Because my  
3 efforts to meet and confer with her never came to fruition. We  
4 did not meet and confer because I had requested that  
5 Mr. Clayton, counsel for Caesar's be there.

6 The bulk of the privilege she's asking for is  
7 Caesar's privilege. Caesar needs to be involved in the  
8 evaluation of any privilege. And to be clear, Caesar's has  
9 made clear to me that they are not waiving privilege or any  
10 other protection that they have.

11 And then also, your Honor, Rule 45(d)(1) puts the  
12 onus on the subpoenaing party to make sure that it is not -- it  
13 says that this party has to take steps to avoid imposing undue  
14 burden or expenses on the parties subject to the subpoena. And  
15 it can apply a sanction if those efforts are not met.

16 So it is not -- I think that's the prism from which  
17 the Court needs to look at this. It can't be for us to prepare  
18 a privilege log on an entire litigation file when there's been  
19 no effort whatsoever to try and narrow the scope and the burden  
20 of the subpoena as Rule 45(d)(1) requires.

21 Similarly, 45(d)(3)(a)(3) provides that the subpoena  
22 must be quashed if it "requires disclosure privilege or other  
23 protected matter".

24 So that's why we're before the Court. I know there  
25 have been some allegations that we were in violation of

1 thumbing our nose at Judge Foley's orders. That's simply not  
2 the case. We took pains to send a lengthy letter, meet and  
3 confer letter, before the first deposition of the first  
4 production was made available. We moved to -- we filed our own  
5 motion. Ms. Smith also filed her own motion as well.

6           So that really is the quash arguments. To the extent  
7 the Court is considering any of these depositions going forward  
8 in any fashion, we would request that a protective order is  
9 required. These are people who have legitimate concerns about  
10 being in the same room with Ms. Smith, and the Court has  
11 options from written depositions, to video, to telephonic, to  
12 allowing it to occur in court when -- where you have  
13 protections that I simply don't have in conference rooms or  
14 court reporters.

15           So in a nut shell, this to me is not the type of  
16 subpoena that can really be modified by the Court, you know,  
17 where there's eight requests, three of which are too broad so  
18 you strike those, you narrow two of them and we go. This just  
19 is overly broad from the beginning to end, and I don't -- I  
20 don't think there's a way for the Court to modify. I think  
21 these have to be quashed.

22           **THE COURT:** Thank you, Mr. Fugazzi. Ms. Smith, do  
23 you want to respond? This is, again, on the defendant's Motion  
24 to Quash and Seal and for a protective order. There --

25           **MS. SMITH:** Yeah, so their emergency Motion --

1           **THE COURT:** They're numbers 36 --

2           **MS. SMITH:** -- to Quash?

3           **THE COURT:** -- 37, and 38.

4           **MS. SMITH:** Okay. I don't think I got 36 from the  
5 defense and I didn't see UFC -- ECF, is that what it's called?

6           **THE COURT:** But they're all related and you may not  
7 have gotten some sealed documents, but the --

8           **MR. FUGAZZI:** It was mailed.

9           **THE COURT:** -- the import of the motion, I think you  
10 are familiar with through the Motion to Quash, you were  
11 seeking?

12           **MS. SMITH:** Yes, they want to quash the subpoena,  
13 basically preventing me from getting evidence that's at the  
14 heart of this case.

15                   And I also filed a motion, a response to them asking  
16 for injunctive relief in a protective order because they seek  
17 to continually include my medical history. Now they're  
18 including it as an excuse to prevent me from either doing  
19 depositions or getting the documents that's at the center of  
20 this case.

21                   Just to point out, when Mr. Fugazzi emailed me to do  
22 a meet and confer over the subpoenas, most of his objections  
23 were attorney/client, work product, those type of things.

24                   And then in his emergency motion, now he throws in my  
25 medical records to say, "Oh, look, she's crazy, we don't want

1 her taking depositions or getting documents." That's basically  
2 the argument that he was making which I find highly, highly  
3 inappropriate.

4 But as far as the subpoenas being able to take the  
5 depositions of the seven people who were involved, which I  
6 believe in creating these messages and defaming me, I think  
7 that's necessary, that's important. And I don't see any  
8 grounds -- and I haven't heard any grounds for which I should  
9 be prevented from questioning these seven individuals who were  
10 either involved in creating documents or -- and/or involved in  
11 trying to use the Court to -- or abuse the court system to  
12 target me in 2017 and thereon, and even still today.

13 As far as the -- he made an argument about the crime  
14 -- or he brought up the crime fraud exception that I argued.  
15 And I did present evidence to -- at least some evidence that I  
16 have my hands on at this moment to kind of show that Caesar's  
17 and themselves, Fennemore Craig, were involved in what I would  
18 consider a crime and a fraud on the Court in trying to target  
19 me, namely in creating messages.

20 And I believe in the exhibits to the opposition to  
21 the Motion to Dismiss, there is testimony from a third-party  
22 individual citing that the parties contacted her telling her  
23 that I was sending these messages that they created themselves,  
24 and that I was threatening others.

25 And then there's an audio, an internal audio from, I



1 believe, their defendants, Caesar's, basically stating that  
2 they would target me and saying that I created these messages,  
3 same thing, the defamation.

4 And so for me not to be able to depose their  
5 attorneys who were involved in creating the messages, I think  
6 that's just wrong and I didn't see any grounds for --

7 **THE COURT:** Tell me, you filed a motion, and it's  
8 number 43, seeking to compel the depositions of Ms. Radak and  
9 Ms. Gianini.

10 **MS. SMITH:** Right.

11 **THE COURT:** Why don't you explain to me what the  
12 basis for that is?

13 **MS. SMITH:** So Ms. Radak and Ms. Gianini, so they  
14 were involved in -- I basically I believe Ms. Radak is my mom's  
15 former boss and right after she was -- or they used the  
16 messages basically to further -- to terminate her and then to  
17 prevent her from getting her job back. And how they did that,  
18 I have no idea.

19 But Ms. Radak contacted that third party. That third  
20 party testified to that, that Ms. Radak specifically contacted  
21 her and other members of Caesar's Entertainment which is in  
22 another separate case. But that they contacted her to  
23 basically state that I was the one sending these messages,  
24 blah, blah, blah, blah

25 Well, Samantha Radak was involved with conspiring

1 with Fennemore Craig because they helped her to get the  
2 messages and then secure the TPO against me. I'm not sure how  
3 they did that with anonymous messages but that's another issue.

4 And then -- and then Fennemore Craig helped them with  
5 also filing a lawsuit against me putting me in a lawsuit, again  
6 based off of the anonymous messages and 50 doe defendants. So  
7 that was, like I said, a huge burden on me trying to defend  
8 that.

9 And so Samantha Radak and Deborah Gianini were  
10 involved in that earlier scheme in 2017 which involved creating  
11 the messages, targeting me, and all this was surrounding or at  
12 the heart of my mom not getting her job back and/or being  
13 terminated.

14 And then he briefly mentioned about the document  
15 requests that I did, that they were broad or subject to their  
16 attorney/client privilege, which I didn't quite finish the  
17 crime fraud argument with them creating the messages and then  
18 using those messages to secure TPOs, which is in furtherance of  
19 a fraud. The crime fraud exception to attorney/client  
20 privilege, which is why I'm seeking partly, documents, anything  
21 that concerns myself, number one and/or my mom starting in 2017  
22 when that crime fraud began up until now.

23 Because a few months ago they did, you know, I guess  
24 revamp or restart this whole TPO thing with targeting me and  
25 getting the courts here in Reno, and as I stated in my motion,

1 I'm sure if I didn't file a lawsuit it would have been at where  
2 -- at the locations that their firms are located, meaning  
3 Arizona and other places because they conspired and asked their  
4 employees to begin filing TPOs against me.

5 So that is in furtherance of a fraud. That is why I  
6 asserted the crime fraud exception to any attorney/client  
7 privilege that they are now trying to claim to prevent me from  
8 getting evidence that might implicate them in the fraud that  
9 has occurred since 2017.

10 So I don't believe those documents are privileged at  
11 all. Any documents concerning myself, any documents concerning  
12 my mom because I'm connected to her, I don't believe that those  
13 are privileged in this case especially where the heart of the  
14 case really is about, you know, the defamation, about them  
15 creating documents, about them distributing confidential  
16 settlement agreement which their prior TPOs and their prior  
17 lawsuit was dismissed.

18 So all of that is at the center of the -- of this  
19 current lawsuit. And so to tailor it anymore means that I  
20 don't get evidence that is at the heart of this case, meaning,  
21 you know, there -- how much more can you tailor it? I'm asking  
22 for documents concerning just myself, my mom, from 2017 to now.

23 And another thing he brought up was the protocol. I  
24 was going to discuss it more in detail with Mr. Fugazzi at a  
25 meet and confer. I told him I will not confer with Mr. Clayton

1 because Mr. Clayton is representing Caesar's in a separate case  
2 that has really nothing to do with this case.

3 And at the meet and confer I was going to further  
4 specify what the protocols would be or the ones that I came up  
5 with. And basically how I did that is I looked at other  
6 jurisdictions and other courts and the protocols that they  
7 implemented when a plaintiff or a defendant has requested  
8 forensic examination of computer evidence or cell phone  
9 evidence, things of that nature.

10 There are specific protocols that can be followed  
11 that, you know, where, you know, I'm not going to get -- not  
12 that I even care, but documents concerning other people or  
13 documents that don't fall into the scope of concerning myself,  
14 my mom from 2017 to now. I mean, there are parameters that a  
15 forensic examiner can, you know, just specifically search for  
16 those documents that are in their possession.

17 And the reason that I wanted a forensic examination  
18 is number one, these people are creating documents in my humble  
19 opinion, and number two, then they're using these documents to  
20 then petition courts for TPOs, for lawsuits, things of that  
21 nature.

22 And so the evidence really at the heart of this case  
23 is contained in either their phones that they used, you know,  
24 to conduct their work, and/or the computers that they used to  
25 conduct their work and communicate with other third parties who

1 were involved. I can't remember --

2 **THE COURT:** Mr. Fugazzi, an opportunity to respond --

3 **MS. SMITH:** Sure.

4 **THE COURT:** -- to your arguments regarding motion --

5 ECF number 43, which is Ms. Smith's Motion to Compel the

6 Depositions of Ms. Radak and Ms. Gianini, if there's anything

7 else you want to add, that's fine, but --

8 **MR. FUGAZZI:** Your Honor, actually Mr. Clayton is  
9 counsel for Radak and Gianini, so I think those are probably  
10 arguments best left for -- he has briefed the issue, he was the  
11 one who moved, and it's probably best for him to respond to  
12 those.

13 **THE COURT:** Certainly. To the extent that you feel  
14 is necessary, I'm happy to listen.

15 **MR. CLAYTON:** Your Honor, I appreciate your comments.  
16 It's a quick one. May I approach the podium for --

17 **THE COURT:** Certainly.

18 **MR. CLAYTON:** Okay. I'll just take --

19 **MR. FUGAZZI:** Just take my seat.

20 **MR. CLAYTON:** No, that's all right. Thank you. Your  
21 Honor, just a couple of quick points.

22 **THE COURT:** You can come to the podium please.

23 **MR. CLAYTON:** That all right? Okay. Thank you.

24 **THE COURT:** Mm-hmm. Yes.

25 **MR. CLAYTON:** I appreciate that.

1           **THE COURT:** I'm sorry I couldn't tell that you  
2 weren't up there.

3           **MR. CLAYTON:** All right. I'm not sure if there's an  
4 issue on this, but I think she raised it in her briefs that  
5 there was an untimeliness issue on filing the written objection  
6 or the Motion to Quash. The rule says that you get the earlier  
7 of 14 days from the time of the service or up to the time when  
8 you're supposed to have compliance, and we complied with that.  
9 So I just want to make sure that the dates are accurate.

10           Now, what's different -- I appreciate the arguments  
11 of counsel and I'm going to join them because they inure to our  
12 benefit. In this particular case here, I represent Ms. Radak  
13 and Ms. Gianini, the deponents.

14           What's unique for my client, at least one of them, is  
15 the existence of the settlement agreement. Now in the  
16 settlement agreement that she signed, and it occurred after the  
17 -- when she said she was involved in a lawsuit, well that  
18 lawsuit resulted in a no contact agreement between her,  
19 Ms. Radak, and my other defendants in the other case. So now  
20 she's being selective as to how to enforce that particular  
21 document.

22           It says thou shalt not come within 100 feet of my  
23 clients. Yet then it said by service by agent or otherwise.  
24 So it is pretty broad the nature of the no contact prohibition.  
25 By serving these subpoenas on my client, that's -- they've

1 already violated that particular provision. She suggested it's  
2 somehow unenforceable yet cites to no case or no legal  
3 authority to support that position.

4 **MS. SMITH:** It's in the document itself.

5 **THE COURT:** It's all right, Ms. Smith, I'll give you  
6 an opportunity to respond to what Mr. Clayton has to say. So  
7 why don't you let him speak uninterrupted as they have allowed  
8 you to do. Thank you. Go ahead.

9 **MR. CLAYTON:** Thank you, your Honor.

10 The agreement itself says it's going to be governed  
11 by Nevada law. Nevada law under Rule 65 allows for injunctions  
12 or temporary restraining orders to be issued day in and day out  
13 when there's a potential harm that can come to somebody. That  
14 was -- that was the consideration that my clients were seeking  
15 in having this particular document, this settlement agreement  
16 reached in this case. They wanted freedom from being harassed  
17 and being pursued and being intimidated. That was the  
18 consideration of the agreement.

19 The severability clause in that agreement, and I  
20 think we pointed this out pretty vividly, it says, "If some of  
21 these provisions are declared unenforceable, it can only happen  
22 if it doesn't undercut the essence of the contract." And the  
23 essence of the contract here is to give my clients some  
24 protection from the threats, the intimidation, and the  
25 harassment. So this agreement is enforceable. It would

1 preclude the type of conduct she is seeking here through the  
2 court issued subpoena at least through December 1. That's when  
3 the timeframe --

4 **THE COURT:** I've heard the --

5 **MR. CLAYTON:** -- ends on that. So I appreciate that,  
6 Judge.

7 **THE COURT:** (indisc.)

8 **MR. CLAYTON:** The other issue that I want to hit,  
9 there was the suggestion that I hadn't seen the documents and  
10 yet I was making objection of attorney/client privilege.

11 She is correct that I have not been living and  
12 breathing this unfortunate case for two years like she has. So  
13 I am unaware of the volumes of documents that may exist. But I  
14 do know that my client was previously represented by the  
15 Fennemore Craig team in the Parazar versus Fennemore -- or  
16 excuse me, Parazar versus the Caesar's Entertainment and Planet  
17 Hollywood matters. That by its very nature and given the  
18 specific language of the documents she's seeking in this  
19 subpoena would be protected by the attorney/client privilege.

20 Third point and the work product document. One of  
21 the points that I've raised and I want to simply reiterate  
22 here, and I think it's been reconfirmed in a very acute  
23 fashion, that these cases are inter-related, and that the  
24 information she is seeking through the deponents and my clients  
25 and the other various deponents in this case would be



1 absolutely duplicative of what she's seeking in the  
2 concurrently pending Smith versus Caesar's Entertainment Planet  
3 Hollywood case which is the companion.

4 Now the Court has allowed these to come to Judge  
5 Navarro as a single. There are motions to consolidate pending.  
6 We have joined those and the parties have outlined in specific  
7 detail the interrelatedness between those two.

8 We think it would be a waste of judicial, client, and  
9 personal resources to allow this type of discovery to move  
10 forward when there's those types of motions that are pending  
11 that can resolve a lot of this particular -- the state of  
12 affairs that we're finding ourselves here today.

13 We joined that motion to consolidate. We think that  
14 there's clearly ample room. She argues that it may not. She  
15 believe that it doesn't exist, but there's point by point  
16 allegations of each complaint identified.

17 We have likewise filed motions to dismiss and anti-  
18 SLAPP motions in the related case. Those motions are  
19 dispositive in nature. She's also filed a Motion for Remand in  
20 the other case. So if all these cases are consolidated and  
21 those motions are pending, I think there would be a  
22 considerable conservation, and the court has seen the  
23 extensiveness of the documents --

24 **THE COURT:** It has.

25 **MR. CLAYTON:** -- by respectfully placing a hold on

1 what she's seeking in this case so that Judge Navarro and the  
2 other magistrate or however it's going to be resolved can  
3 resolve these issues.

4 Our clients can take a breath and allow for the Court  
5 to do what it needs to do in these particular situations. So I  
6 think there's clearly the economics and those things that  
7 motions to consolidate are trying to conserve, they're being  
8 sidestepped or pushed away by the arguments that the plaintiff  
9 is advancing.

10 Thank you, your Honor.

11 **THE COURT:** Thank you. Ms. Smith, please feel free  
12 to respond.

13 **MS. SMITH:** Okay. Yes, I wanted to talk about the  
14 agreement that -- really he was arguing about Ms. Radak because  
15 there is an agreement, "Oh, okay, stay away from this person  
16 that you don't know for -- until December 1, 2019." And sure  
17 that was signed, but there's also a part in the agreement that  
18 allows for that to be severable. There's actually two parts, I  
19 believe it's number 7 and 14, I believe it's -- that it allows  
20 that -- for that agreement to be severable when it -- if it's  
21 in contradiction of any kind of Nevada law or judicial  
22 proceeding like now with the subpoenas for Ms. Radak.

23 Even then I think it's only until December 1, 2019,  
24 but I didn't see any reason why Ms. Radak who was involved  
25 actually in creating her own messages can't be just -- can't be

1   deposed as to number one, how she got those messages, why she  
2   distributed it, and why she spoke to another third party  
3   basically accusing me of these messages before she even created  
4   them.

5               So those are issues that I believe she should be  
6   deposed about as well as Ms. Gianini who was involved in  
7   helping her. And so this Court actually can order Ms. Radak to  
8   attend deposition as well as Ms. Gianini.

9               And then like, the defense for Ms. Radak and Gianini,  
10   he said he doesn't know what documents he's asserting an  
11   attorney/client privilege over.

12              Even though I'm arguing for crime fraud, it still  
13   goes to show that he's just trying to get a broad protective  
14   order over documents that he doesn't know about. And I really  
15   think the Court should deny that argument and deny his request  
16   for a protection order over documents that he's never even seen  
17   or had the time or whatever, the care to look at or look up.

18              Another thing that he argued is that because there  
19   are other pending motions that the depositions of Radak and  
20   Gianini, and I think Fennemore makes the same argument, that  
21   because there are pending motions that these depositions should  
22   be Stayed and not -- they shouldn't have to produce these  
23   documents before these motions are decided.

24              And the thing about that, okay, Judge Foley had the  
25   motions to dismiss on the table before he made the decision to

1 go ahead and allow discovery. So even with those motions on  
2 the table, the motions to dismiss, those pending motions on the  
3 table, he still decided, "Hey it's okay go ahead," and he, you  
4 know, ordered for discovery to begin. So it began.

5           And you know, I subpoenaed the individuals who were  
6 likely at the heart of the case. And the Motion to Remand  
7 that's in the separate case that they're trying to consolidate,  
8 it's because that lawsuit really is in the Eighth Judicial  
9 District Court or it's supposed to be. They removed it here  
10 because they want to get it to be heard here so they can  
11 consolidate their cases.

12           Obviously there are issues with consolidation as I  
13 explained. As far as you know, when you they argue that they  
14 only want to consolidate it for pretrial matters but that's  
15 rarely ever the case. Is that it's just consolidated for  
16 pretrial matters. But like I said, that -- the Caesar's case,  
17 the pending Motion to Remand, and the reason why discovery has  
18 not even began in that case yet is because there was a Stay  
19 filed because of the Motion to Remand.

20           And when it comes to a jurisdiction issue, usually a  
21 Motion to Stay is, you know, necessary or the Courts grant a  
22 Motion to Stay if it's based on venue jurisdiction, that type  
23 of stuff. But when it's based on, "Oh, there -- well, there's  
24 a pending motion to dismiss on the table or there's a pending  
25 dispositive motion to dismiss," as it was done in Trade Bay,

1 the Courts said that a case shouldn't be Stayed just because  
2 there's a dispositive motion on the table.

3 And again, their Motion to Dismiss is just laden,  
4 laden with factual contentions that I point out in my  
5 opposition. All of which should be resolved either by through  
6 discovery, deposing the individuals gathering the documents and  
7 information that are in their possession, especially the  
8 documents that they created, and having the Court also consider  
9 those.

10 Because honestly, I really believe that their Motion  
11 to Dismiss, and it's really hard to tell because of the factual  
12 contentions. And the -- then the evidence that they ask to be  
13 judicially noticed by the Court, which is also improper, brings  
14 up also a lot of factual contentions, again, which is resolved  
15 through discovery.

16 And so they want to basically put a Stay or stop me  
17 from getting those documents and doing discovery. And at the  
18 same time have the Court rule on their motions which  
19 essentially are summary judgment motions, or they function as  
20 motions for summary judgment as well. And so they want to  
21 basically hamstring me and say, "Hey, no. Not going to let you  
22 depose anyone, not going to let you get documents, but rule on  
23 these motions to dismiss so this case could be over." And  
24 that's basically what they want.

25 **THE COURT:** Thank you. I believe the only other

1 motions that are pending are motions filed by another party --  
2 or a nonparty, excuse me, law firm that was subpoenaed and some  
3 individuals that -- or an individual that was subpoenaed  
4 (glitch in audio) quash and a Motion to Compel and a motion to  
5 hold that third party in contempt. Those parties are not here  
6 today -- or they are? Okay. Sorry. I wasn't sure I was going  
7 to say if there are then I'm happy to consider those as well.

8 Ms. Smith, we're talking about the documents that  
9 were filed by Mr. Bowen's office, it's ECF number -- meaning  
10 the file number, is electronic case file number is 52, is a  
11 Motion to Quash. And then you filed in response two motions, a  
12 Motion to Hold the Law Firm in Contempt and a second Motion to  
13 Compel the Depositions. So I am --

14 **MS. SMITH:** Yes.

15 **THE COURT:** -- if Mr. -- are you Mr. Bowen? I'm  
16 sorry. If you would like to be heard on your Motion to Quash,  
17 I'd be happy --

18 **MS. SMITH:** And sorry, your Honor, I also had a  
19 Motion to Strike Their Reply -- that they would --

20 **THE COURT:** On number 37?

21 **MS. SMITH:** My Motion to Strike Their Reply which  
22 included new evidence, was number 50.

23 **THE COURT:** Thank you. Number 50. Right. I misread  
24 my own handwriting. I will hear you on that as well. So --

25 **MS. SMITH:** Okay.

1           **THE COURT:** -- why don't you go ahead since you had  
2 come up, Mr. Bowen.

3           **MR. BOWEN:** Thank you, your Honor.

4           **THE COURT:** Okay. Plaintiff (indisc.)

5           **MR. BOWEN:** Your Honor, I don't have much to add. I  
6 -- going in the arguments of my learned counsel, we -- this --  
7 these two matters are related. Your nonparties to either of  
8 them or to both of them rather and we represented Ms. Parazar  
9 for literally weeks, and two or three of those weeks we were  
10 attempting to withdraw. No good deed goes unpunished.

11           But since that time we have been asked to -- we have  
12 been -- we have received, Mr. Trout (phonetic) and myself, have  
13 received subpoenas that are completely broad. They want to  
14 come on the premises, they want to inspect everything. There's  
15 no description whatsoever to the premises inspection. And all  
16 of the materials that were in the file that were discoverable,  
17 and the clients materials were immediately given to  
18 Ms. Parazar, were copied onto a drive, and given to -- a flash  
19 drive, and given to her at the time that we withdrew and were  
20 allowed to withdraw from the Court.

21           Mr. Trout was subpoenaed for a deposition by  
22 Ms. Parazar. He showed up for that deposition and gave  
23 testimony. And it was a very -- I wasn't aware when it was  
24 happening, but I've since looked at the deposition. It was a  
25 very hostile deposition. And there was overlap between this

1 case, Ms. Smith's case and the Parazar case. And I'm not sure  
2 why Ms. Smith or what intentions Ms. Smith has in re-deposing  
3 him or deposing him again.

4 My knowledge is very limited. But I think you  
5 understand the law, obviously, Judge, and the facts and  
6 circumstances. I won't go on anymore other than to say this  
7 has been very upsetting. Ms. Parazar put a scathing comment  
8 online about me, personally attacking me and my religion and my  
9 position.

10 I was served during a religious service approximately  
11 one business day before the deposition was set requiring me to  
12 file immediate motion so I couldn't do a meet and confer. I  
13 understand Mr. Trout attempted to do a meet and confer. But  
14 it's been very upsetting. And so we appreciate being here  
15 today, Judge, and look forward to you ruling. Thank you.

16 **THE COURT:** Thank you. Ms. Smith, why don't you  
17 address Mr. Bowen's Motion to Quash your subpoenas --

18 **MS. SMITH:** Sure.

19 **THE COURT:** -- and then also, you can address after  
20 that your Motion to Strike the reply which you filed on ECF  
21 number 50.

22 **MS. SMITH:** Yes. Okay. Sure. So Mr. Bowen's Motion  
23 to Quash, I didn't get that. So I'm not sure what he wrote.

24 But I did file a motion to hold them in contempt and  
25 to compel them. So before all of these subpoenas went out,



1 there was a notice sent to the other side obviously saying  
2 that, "Hey, I'm going to send out these subpoenas."

3 So as soon as that notice was filed, I guess, they  
4 got in contact with Mr. Trout and Mr. Bowen because then  
5 Mr. Trout and Mr. Bowen started trying to dodge service.

6 And my process server filed an affidavit, you know,  
7 it's on file actually showing that they were attempting to  
8 dodge service, meaning Mr. Bowen was telling the process  
9 server, which I believe my mom said he did the same thing to  
10 her. Which there were issues with them because they were  
11 working with the, I guess, the other side's attorney in my  
12 mom's case to basically sabotage my mom's case.

13 And so yeah, my process servers tried to serve him.  
14 Kept telling her he's out of town, he's not there, he left  
15 early, all of the excuses in the book that he could give. And  
16 so I told the process server to well, serve him at church  
17 because I am pretty sure he'll be a church on Sunday, he's the  
18 bishop. And I know that through a family friend. But he's the  
19 bishop so I'm pretty sure he'll be at church on Sunday. Since  
20 he's dodging service at his own law firm, serve him at church.  
21 So I did not -- my first -- my go to wasn't to serve him at  
22 church but he kept -- he was dodging service.

23 And then with Mr. Trout he was doing the same thing.  
24 And that's why I believe that they got in contact with  
25 Mr. Trout and Mr. Bowen. So Mr. Trout was doing the same

1 thing. I tried to serve him at his -- wherever he worked, his  
2 workplace first. My process server went there, first they told  
3 her he wasn't there, same thing.

4           Then the day that -- there was a day he was there, my  
5 process server said he refused to come forward to accept the  
6 subpoena. Okay so I had to now find a different route again to  
7 serve him. So he got served at his home. So they knew about -  
8 - it wasn't like they -- they're now finding -- they were now  
9 finding out about the subpoena. They knew about the subpoenas  
10 before they were served on them. They were just trying or  
11 attempting to dodge service.

12           And so now they're acting like, "Oh well, we just got  
13 it one day before the deposition or we just got it." I think  
14 in Brandon's case, a few days before the deposition, and they  
15 are acting like, "Oh well, we can't attend because of short  
16 notice." When they already knew about the subpoena and they  
17 knew that my process server was attempting to serve them, but  
18 they were being untruthful and saying that they either weren't  
19 there or they refused to come forward and accept the subpoenas.

20           And so with that I think their argument should be  
21 disregarded as to why they didn't show up for their depositions  
22 that were scheduled.

23           So the reason that they were subpoenaed is because  
24 employees at Fennemore Craig's specifically send them letters  
25 containing, you know, statements saying that I was a threat,

1 that I was a danger, that they wanted to include me or bring me  
2 into my mom's lawsuit, because again, I told you I'm not  
3 mentioned in my mom's lawsuit, and I'm really not a part of my  
4 mom's lawsuit until, well, their side attempted to bring me in  
5 as a witness, not my mom, they did.

6 And so the reason that Mr. Bowen and Mr. Trout were  
7 subpoenaed for a deposition and for documents is because there  
8 is reason to believe, especially from the document that was  
9 sent from one of their employees at Fennemore Craig to  
10 Mr. Trout and Mr. Bowen basically containing the slanderous  
11 statements, there is reason to believe also that Mr. Trout and  
12 Mr. Bowen have further communications with either that  
13 employee, that same employee or other employees at Fennemore  
14 Craig basically again, containing these slanderous statements,  
15 the statements saying that I'm a threat, this, that against me.  
16 Which is not under any type of litigation privilege because I'm  
17 not involved in any litigation that either they were on or that  
18 was concerned with them. So anything about me that they sent  
19 or that they received has nothing to do with a litigation as  
20 they may try to say.

21 On my Motion to Strike, so I asked to strike  
22 defense's reply which included a new evidence and new exhibits.  
23 So defense basically filed his emergency motion. Now instead  
24 of attorney-client and all that he was asserting, "Oh, she has  
25 issues," I guess because I had mental health issues in the past

1 or not in the past that one day basically that I shouldn't be  
2 allowed to do depositions or gather documents or whatever. And  
3 so he inserted my medical records, which I also asked the Court  
4 to seal and provide injunctive relief against him continually  
5 distributing the medical records publicly.

6 And then -- so he made all these accusations saying  
7 that I had made threats in the past, you know, at times they  
8 all say, "Oh we -- it's just a reasonable belief." But then  
9 when they write and sometimes when they make statements, it'll  
10 be like you know, they state it as if it's fact, meaning it  
11 turns from, oh, just being belief to defamation because now  
12 you're, you know, distributing and telling third parties that  
13 I'm doing these things when I'm not or that I'm crazy, stuff  
14 like that or that I have schizophrenia, and I don't. Things of  
15 that nature.

16 And so he made all those assertions in his initial  
17 brief. I replied stating, you know, they're incorrect and why  
18 they're incorrect. He then files a reply now packing on  
19 evidence that is also -- that also contains factual  
20 contentions, because the evidence that he included, at least  
21 the way he described it, is not true.

22 I can't respond to that because then if I did  
23 respond, he will file a Motion to Strike my Response, right?  
24 Because you only get a brief opposition and then a response.  
25 So it's unfair and, you know, other Courts have stricken

1 replies where it includes new evidence and new case law and new  
2 arguments.

3 And so for him to then come on and try to pack on  
4 evidence after he did his initial brief just making these  
5 assertions, he didn't include any evidence, I don't have to  
6 respond to evidence that he doesn't include.

7 But for him to now try to put that evidence in a  
8 reply to my opposition and prevent me from being able to  
9 respond and actually, you know, oppose his erroneous arguments,  
10 I think it's unfair for him to be able to keep that on the  
11 table without either allowing me to respond or having it  
12 stricken.

13 Which I believe it should be stricken really because  
14 it has nothing to do with the emergency Motion to Quash which  
15 is based on the subpoenas and gathering evidence and being able  
16 to take depositions. I don't believe that has anything to do  
17 with it, I just think it will continue to be a delay, so I  
18 believe it should be stricken from the record, the evidence and  
19 his response.

20 **THE COURT:** Thank you. I have one question,  
21 Mr. Fugazzi, I know you filed, fairly recently, a Motion to  
22 Extend some discovery. And do you know the ECF number of that  
23 by any chance?

24 **MR. FUGAZZI:** It was filed on the 11th of the month,  
25 your Honor.

1           **THE COURT:** Something -- and I apologize --

2           **MR. FUGAZZI:** I've got it.

3           **THE COURT:** I am in a borrowed courtroom and I can't  
4 access my system maybe the --

5           **MR. FUGAZZI:** No, I've got it here, Judge --

6           **THE COURT:** Okay.

7           **MR. FUGAZZI:** -- if you give me one moment.

8           **THE COURT:** 61 is what the --

9           **MR. FUGAZZI:** It should be --

10          **THE COURT:** -- put --

11          **MR. FUGAZZI:** Yeah, that sounds right.

12          **THE COURT:** Okay.

13          **MR. FUGAZZI:** It was September 11th.

14          **THE COURT:** Okay.

15          **MR. FUGAZZI:** Don't apologize.

16          **THE COURT:** I don't need to hear anything else. If  
17 there's something you feel compelled to say, I won't stop you.

18          **MR. FUGAZZI:** Thirty seconds.

19          **THE COURT:** Mr. Bowen, the same.

20          **MR. FUGAZZI:** Your Honor, I can be 30 seconds. The  
21 simple response is Judge Navarro herself in the Evans versus  
22 Encore Event Technologies case that we cited, it's unpublished  
23 but it's an order from Judge Navarro in footnote one where she  
24 says, "in a reply a party may use evidence to rebut evidence  
25 presented in an opposition to a Motion for Summary Judgment."

1 And there are clear allegations on page 3 and 11 that Ms. Smith  
2 said she never threatened, never made a threat, there are also  
3 allegations that she never even knew about the attachment of  
4 her medical records and we attached declarations with her  
5 authenticating them. And the evidence that we attached to our  
6 reply rebut that argument that she never threatened anyone. So  
7 unless the Court has questions --

8 **THE COURT:** I understand quite well.

9 **MR. FUGAZZI:** Thank you, your Honor.

10 **THE COURT:** Thank you, Mr. Fugazzi. Mr. Bowen did  
11 you have something brief?

12 **MR. BOWEN:** Yeah, just brief, Judge. Thank you. I  
13 just can't let those allegations, I apologize. I want to make  
14 sure because we're on the record. Nobody tried to evade  
15 service, your Honor. In fact, Mr. Trout did give a deposition  
16 on the one matter. I just would like to indicate that at no  
17 time did my firm ever, ever collude with Fennemore Craig nor  
18 have we ever done that. Our goal was always to defend  
19 Ms. Parazar to the best of our ability until we determined we  
20 could not in good faith further act as her counsel and at that  
21 time withdrew. Thank you.

22 **THE COURT:** Thank you.

23 There are 12 motions pending, perhaps 13. Those are  
24 ECF numbers 19, 31, 36, 37, 38, 42, 43, 44, 50, 52, 53, 54, and  
25 61. Number 19 is a Motion to Stay Discovery.

1           With that motion we stayed the rest of the -- if that  
2 motion is granted, the remainder of the motions are rendered  
3 moot, meaning they won't be ruled on at this time and they will  
4 be dismissed without -- they would be denied without prejudice,  
5 meaning they could be refiled at a time where discovery was  
6 reopened should the Court not grant the Motion to Dismiss,  
7 which is not before me. The Motion to Dismiss is before Judge  
8 -- I'm sorry, Judge Navarro and it is she who would decide that  
9 motion as well as the Motion to Remand this Case, this  
10 particular case to State Court.

11           Court will issue a written order on the Motion to  
12 Stay Discovery, but I wanted to tell you in Court today in case  
13 you have any questions that that motion will be granted.

14           And because the Motion to Stay Discovery will be  
15 granted, all other pending motions will be denied without  
16 prejudice as moot to be refiled should the Court not -- meaning  
17 Judge Navarro, not either remand this case to State Court,  
18 Ms. Smith, or not dismiss it.

19           And it is my job to take a preliminary look at the  
20 Motion to Dismiss and the complaint you found, the basis for  
21 the motion, your opposition, and I have done that. And I have  
22 found that there is a substantial likelihood that the motion  
23 will be granted and that is the primary reason for staying  
24 discovery.

25           Do you have any questions about what I've just said,



1 Ms. Smith?

2 **MS. SMITH:** Yes. So the Motion to Dismiss, that's  
3 basically a Motion for Summary Judgment if you looked at it,  
4 and --

5 **THE COURT:** I do not decide that. That is in front  
6 of --

7 **MS. SMITH:** Okay.

8 **THE COURT:** -- Judge Navarro. And she will decide  
9 whether or -- whether to grant it or deny it. That is entirely  
10 within her purview.

11 **MS. SMITH:** Okay, but you said you looked at it.

12 **THE COURT:** If she believes it is a Motion for  
13 Summary Judgment and it is an improper motion, she would deny  
14 it. But I am not telling you that she will or will not deny  
15 it. It is not something that I have any input on. I am simply  
16 here to deal with the discovery issues and all of those that  
17 have been discussed today, the motion numbers that I have  
18 mentioned to you.

19 **MS. SMITH:** Okay. But you said you looked at the  
20 Motion to Dismiss and you feel like that it'll be granted.

21 **THE COURT:** I --

22 **MS. SMITH:** So that's why you're staying or you're  
23 preventing me from deposing the parties who are at issue in  
24 that motion.

25 **THE COURT:** The law on motions to stay discovery

1 require the U.S. Magistrate Judge, which is what I am, to take  
2 what's called a preliminary peek to look at the Motion to  
3 Dismiss and to make a determination based on my experience and  
4 my understanding of the law as to whether that motion is likely  
5 to be granted.

6           If I believe that there is a substantial likelihood  
7 of that motion being granted, then I am empowered to Stay  
8 discovery. So I could be wrong, because this is Judge  
9 Navarro's decision and Judge Navarro and I do not discuss the  
10 motions before her or before me. She makes her decisions and I  
11 make mine. They are separate.

12           So she will decide the Motion to Dismiss. I've not  
13 discussed that with her. It is my opinion that there is a  
14 likelihood, a strong likelihood that the motion will be  
15 granted. And I'm exercising my discretion based on that  
16 belief, based on my legal experience, and my understanding of  
17 the law and my position as a Judge in this case to Stay  
18 discovery and dismiss -- deny the remaining motions that I've  
19 mentioned without prejudice, meaning they can be refiled and  
20 reargued should Judge Navarro not grant the Motion to Dismiss.  
21 They're not gone forever. They're gone until that -- until  
22 Judge Navarro makes a decision on the Motion to Dismiss.

23           **MS. SMITH:** Okay. And what -- can you state what  
24 specifically you looked at or what specifically you -- well,  
25 what specifically you looked at in the Motion to Dismiss that

1 caused you to have that opinion?

2 **THE COURT:** There is a very -- there are several very  
3 strong privileges under the law that exist that are well  
4 settled. Anti-SLAPP statutes are very clear. The right to  
5 petition the Court and as well -- and you have that same right.  
6 And the litigation privilege, privilege of what is said in a  
7 court proceeding. Those matters cannot be the basis for claims  
8 of defamation or slander.

9 In addition, the civil conspiracy that you pled is  
10 against Fennemore Craig only, and the law in Nevada is very  
11 clear that a company cannot conspire with itself. So there  
12 must be more than one entity, a company and its employees  
13 cannot be co-conspirators. There must be two separate  
14 unrelated entities, and there is only one here.

15 Your emotional intentional infliction of emotional  
16 distress claim just doesn't state a claim upon which relief can  
17 be granted. The use of the language that you allege, I  
18 understand is offensive and would be offensive to many people,  
19 and even if true on this single occasion that it occurred,  
20 would not be sufficient to state an intentional infliction of  
21 emotional distress claim under Nevada law.

22 So the claims that you have asserted, civil  
23 conspiracy, slander, slander per se, defamation, defamation per  
24 se, and the intentional infliction of claims will fail, I  
25 believe, based on the law that is applicable to those claims.

1           With respect to the settlement agreement, there is an  
2 exception to that settlement agreement that allows the  
3 disclosure of it for purposes of either enforcing it or to  
4 others who need to know within the law firm. The use of that  
5 settlement agreement in this case was not impermissible in my  
6 legal opinion.

7           So I believe that your claims will fail and/or be  
8 remanded. The Court -- Judge Navarro may just choose to remand  
9 them to State Court, but I do not believe they will survive in  
10 the Federal Court System.

11           That is why I'm Staying discovery. But I will put  
12 all of that in a written order for you so that you can see it  
13 and analyze it for yourself.

14           **MS. SMITH:** Okay. And did you just read their Motion  
15 to Dismiss or did you also look at the opposition?

16           **THE COURT:** I looked at --

17           **MS. SMITH:** Or just their --

18           **THE COURT:** -- the motion, the opposition, and the  
19 reply. I've looked at all the pleadings in this case not just  
20 one side. I've read your motions, your oppositions, your  
21 replies, defendant's motions, oppositions, and replies, as well  
22 as those filed by third parties. I looked at everything, spent  
23 quite a bit of time. That's why this has been sitting for some  
24 period of time. It was a lot to review.

25           **MS. SMITH:** All right. So the defamation claim is

1 not only -- is not about any statements that they made in  
2 court. That's the thing.

3 **THE COURT:** Well, the Judge --

4 **MS. SMITH:** It's about --

5 **THE COURT:** Judge Navarro will make that decision as  
6 I said I'm not making a decision that your case is being  
7 dismissed. I'm making a decision that your case is being Stayed  
8 for discovery purposes.

9 If there's nothing further from defendants?

10 **MR. FUGAZZI:** The Stay is effective as of now is the  
11 question?

12 **THE COURT:** The Stay is effective as of the Court's  
13 announcement of its decision today and a written order will  
14 follow so that Ms. Smith and anybody who chooses to take issue  
15 with what is written may do so in accordance with the rules  
16 applicable in Federal Court.

17 **MR. FUGAZZI:** Thank you, your Honor.

18 **MR. BOWEN:** Thank you, your Honor.

19 **THE MARSHAL:** All rise.

20 **(Audio ended at 2:15 p.m.)**

21  
22  
23  
24  
25

**CERTIFICATION**

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is written above a horizontal line.

Signed

October 4, 2019

Dated

**TONI HUDSON, TRANSCRIBER**

CERTIFICATE OF SERVICE

I certify that I am serving a true and correct copy of the attached OBJECTIONS TO THE NEW  
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS on the parties set forth below by:

\_\_\_\_\_ placing an original or true copy thereof in a sealed envelope with the correct prepaid  
postage affixed for collection and mailing in the United States Mail, at Las Vegas,  
Nevada.

  X   Certified Mail, Return Receipt Requested of the document(s) listed above to the  
person(s) at the address(es) set forth below

\_\_\_\_\_ E-service

\_\_\_\_\_ Personal delivery through a process server of the document(s) listed above to the  
person(s) at the address(es) set forth below

Alex Fugazzi and Michael Paretti

SNELL AND WILMER

3883 Howard Hughes Parkway Suite 1100

Las Vegas, NV 89169

702-784-5200

[afugazzi@swlaw.com](mailto:afugazzi@swlaw.com)

[mparetti@swlaw.com](mailto:mparetti@swlaw.com)

          /s/ Latonia Smith          

Plaintiff, In Proper Person

Dated this 7th day of October 2019

CERTIFICATE OF SERVICE

I certify that I am serving a true and correct copy of the attached EMERGENCY MOTION TO  
VACATE MAGISTRATE JUDGE'S ORDERS AND LIFT STAY on the parties set forth below by:

\_\_\_\_\_ placing an original or true copy thereof in a sealed envelope with the correct prepaid  
postage affixed for collection and mailing in the United States Mail, at Las Vegas,  
Nevada.

  X   Certified Mail, Return Receipt Requested of the document(s) listed above to the  
person(s) at the address(es) set forth below

\_\_\_\_\_ E-service

\_\_\_\_\_ Personal delivery through a process server of the document(s) listed above to the  
person(s) at the address(es) set forth below

Alex Fugazzi and Michael Paretti

SNELL AND WILMER

3883 Howard Hughes Parkway Suite 1100

Las Vegas, NV 89169

702-784-5200

[afugazzi@swlaw.com](mailto:afugazzi@swlaw.com)

[mparetti@swlaw.com](mailto:mparetti@swlaw.com)

          /s/ Latonia Smith           

Plaintiff, In Proper Person

Dated this 7th day of October 2019